



PATENT

Attorney Docket No. 8366.0005-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Zbylut J. TWAROWSKI et al.) Group Art Unit: Unknown
Application No.: 08/412,114) Examiner: Unknown
Filed: March 28, 1995)
For: MULTIPLE LUMEN CATHETER) Confirmation No.: Unknown
FOR HEMODIALYSIS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

TRANSMITTAL LETTER

Enclosed is an Amendment Following Interference and Appeal. The claims are calculated below:

| | Claims Remaining After Amendment | | Highest Number Previously Paid | Present Extra | Rate | Additional Fee |
|---|----------------------------------|---|--------------------------------|---------------|--------------------------------|----------------|
| Total | 59 | - | 21 | 38 | x \$ 52 | \$ 1,976.00 |
| Indep. | 3 | - | 3 | 0 | x \$220 | 0 |
| <input type="checkbox"/> First Presentation of Multiple Dep. Claim(s) | | | | | +\$390 | 0 |
| | | | | | Subtotal | \$ 1,976.00 |
| | | | | | Reduction by ½ if small entity | - 0 |
| | | | | | TOTAL | \$ 1,976.00 |

A check of \$1,976.00 to cover the cost of the additional claims added by this Preliminary Amendment is enclosed.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 23, 2008

By: 
Barbara Clarke McCurdy
Reg. No. 32,120



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12/24/2008 JADD01 00000055 08415114

Sir:

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AMENDMENT FOLLOWING INTERFERENCE AND APPEAL

This application is being returned to *ex parte* prosecution following a patent interference (Interference No. 103,988) between the party Twardowski et al., whose assignee is Curators of the University of Missouri (the University), and Martin et al., whose assignee is Vas-Cath, Inc. (Vas-Cath), a subsequent district court action under 35 U.S.C. § 146, and two subsequent Federal Circuit appeals of that district court action.

In the interference, Twardowski et al. was awarded priority of invention, with the Board finding that Twardowski et al. is entitled to a patent on claims corresponding to the interfering subject matter. The § 146 district court action seeking review of the PTO decision was first brought by Vas-Cath in the U.S. District Court for the District of Columbia, and was later transferred to the U.S. District Court for the Western District of

Missouri, where it was twice dismissed with prejudice (Case No. 05-0400-CV-W-GAF).

After the § 146 action was first dismissed, Vas-Cath filed an appeal to the Court of Appeals for the Federal Circuit, which reversed the district court's action. The district court subsequently dismissed the § 146 action a second time, and while Vas-Cath appealed that second dismissal to the Federal Circuit, on motion by Vas-Cath, the Federal Circuit dismissed the appeal on March 17, 2008 (Appeal No. 2008-1159).

For the Examiner's convenience, attached to the previously filed Information Disclosure Statement dated October 14, 2008, were copies of the Board's decision awarding priority to Twardowski et al. dated July 30, 2003 (with corrections dated August 11, 2003) (Exhibit A), the Missouri Court's decision dated December 6, 2007 and order of judgment in Twardowski's favor dated December 7, 2007 (Exhibit B), and the Federal Circuit's order of dismissal dated March 17, 2008 (Exhibit C).

Amendments to the Claims are reflected in the listing of claims in this paper.

Remarks/Arguments follow the amendment sections of this paper.